

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALCHEMY-SPETEC LLC, a foreign
limited liability company,

Plaintiff,

v.

Case No: 2:19-cv-670-FtM-60NPM

THE PUMP AND SPRAY COMPANY
CORPORATION, a Florida profit
corporation and RYAN WENZEL,
individually,

Defendants.

ORDER

Before the Court is an Objection (Doc. 21) to the Report and Recommendation (Doc. 20) concerning Plaintiff's Motion for Clerk's Entry of Default Judgment (Doc. 14), which recommended that the motion be denied in part and granted in part due to the language and overall structure of the contract that underlies Plaintiff's claims. (Doc. 1-1, pp. 17-18). Without taking exception to the Court's reasoning, Plaintiff's objection instead argues that a previously undisclosed contract—between the Defendants and an alleged predecessor in interest to Plaintiff—supports Plaintiff's claims. (Doc. 21-1, pp. 6-7).

None of the allegations in the Complaint (Doc. 1) relate to this newly produced contract. And entry of a default judgment is warranted only when there is a sufficient basis in the pleadings for judgment to be entered. *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1244-45 (11th Cir. 2015). So from this juncture, the best course forward is to vacate the Report and Recommendation as well as the Clerk's entry of default (Docs. 13, 16), afford Plaintiff leave to amend its Complaint, and require Plaintiff to effect service or obtain

waivers of service under Rule 4 of the Federal Rules of Civil Procedure. If Defendants fail to respond to the Amended Complaint, then Plaintiff can once again move for a clerk's default, and if granted, move for a default judgment.

Accordingly, it is hereby **ORDERED**:

- (1) The Report and Recommendation (Doc. 20) is **VACATED**.
- (2) The Clerk's Entry of Default (both Docs. 13 and 16) are **VACATED**.
- (3) The Motion for Clerk's Entry of Default Judgment (Doc. 14) is **DENIED**.
- (4) By May 22, 2020, Plaintiff will file its Amended Complaint.
- (5) By July 17, 2020, Plaintiff will file proof that it has served each Defendant with a summons, the Amended Complaint and copy of this Order, or file Rule 4(d) waivers dispensing with formal service of these three items.

DONE and **ORDERED** in Fort Myers, Florida on May 6, 2020.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE